IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

WRIT PETITION NO. 1866 OF 2005

1. Sou. Smita Arvinda Apte,
   R/o Chitralekha Apartment,
   Hospital Road, Sangli-416416.

2. Shri Ashok J. Patil,
   R/o Shikshan Sanchanalaya,
   Pune Camp, Pune. .. Petitioners.
   (Ori. Defendants)

Vs.

Shri Ajay Pandurang Potdar
R/o Chintamani, Near Collector Office,
Rajwada, Sangli ..Respondent
(Orig. Plaintiff.)

Mr. T.S. Ingale for the petitioners
Mr.A.M. Kulkarni for the respondent

CORAM : ANOOP V.MOHTA J.
DATE : 12TH DECEMBER, 2005.

ORAL JUDGMENT

. The petitioners-original defendants failed to deposit the cost,within the stipulated time even though ordered by the trial Court. The petitioners' application under section 148 of Civil Procedure Code (C.P.C.) for extension of time to deposit the cost was rejected by an order dated 15/9/2004. An application, was allowed for taking written Statement on record, subject to payment of a cost of Rs. 150/- to the respondents plaintiffs, within one month.

2. Heard the learned Counsel appearing for the parties. Admittedly, the suit was filed on 11th February, 2002 by the plaintiff against the defendants for perpetual injunction restraining the defendants from causing obstruction to his possession of the suit property. There was an inordinate delay in filing a written statement. Therefore, an application was filed to take written statement on record. By an order dated 15/9/2004, same was granted subject to the payment of cost of Rs. 150/-, to be deposited within one month, that expired on 15/10/2004. As defendants failed to deposit the cost within stipulated time, another application was filed under section 148 of C.P.C., on 3/2/2005 and requested to extend the time to deposit the said cost. On the same day, vide order dated 3/2/2005, the said application was rejected. There was no question of grant of any extension as prayed. He further contended that there was no ground of exceptional circumstance was made out by the petitioner-original defendants to move such an application after more than 2-1/2 months. There is no case to interfere with the order passed by the lower Court. Reliance has also been placed on a Division

Bench Judgment (Chintaman Sukhdeo Kaklij and Others V. Shivaji Bhausaheb Gadhe and others) (2004 (4) Mh.L.J., 739).

3. The Apex Court in (Salem Advocate Bar Association, Tamil Nadu V. Union of India)(2005(6) Scale, 26) while, considering various aspects of amendment Act 1999. to the C.P.C. has expressed that the Court has power in exceptional and extraordinary circumstances to use the discretion and to grant such extension of time. The learned Counsel appearing for the parties further strongly relied on the decision in (Ujwala Athare (Patil) V. Asha Ravindra Paranjape (2004 (2) Mh.L.J. 1126), whereby, while considering the amended provisions of C.P.C. and specifically order 5 Rule 1 and order 8 rule 1, a Single Judge of this Bombay High Court has observed, that when a suit was instituted prior to 1/7/2002, provisions of Order 5 Rule 1 of the Code of Civil Procedure, 1908 as amended by Act of 22 of 2002 would not apply. It is further observed that the requirement of filing written statement within 30 days in terms of amended provisions of Order 8, Rule 1 also would not apply in such case. The Apex Court in **(Mr. Shaikh Salim Haji Abdul Khayumsab V. Mr. Kumar and**

Ors.) 2005 (9) Scale 413 And 2005 (10) (1) J.T. SCC by referring Apex Court decision in Shaikh Salim (Supra) observed as under;

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Stature, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations int he ends of justice."

The Apex Court has to accept written statement beyond the period of 90 days in the facts and circumstances of the case.

4. There is no dispute that the trial Court has admittedly, granted an applications of the defendants to take written statement on record. That order remained final. Therefore, by the impugned order, it is very clear that the defendants would not be in a position to file the written statement, even though, it was ordered to be and permitted to be taken on record. After reading the order, it is very clear that the

defendants-petitioners would suffer injustice only because, they failed to deposit the cost within stipulated time. It is true that no sufficient reason have been made out in the application for not depositing the amount within stipulated time. However, considering the nature of dispute between the parties and considering the fact that the Court has already granted permission to the defendants to file the written statement. I am of the view that for want of not depositing cost within stipulated period the party should not be deprived of their rights to contest the proceeding by filing a written statement.

5. Taking all this into account, I am inclined to consider the case of the petitioner. Impugned order therefore, is quashed and set aside. Application for extension of time under section 148 of C.P.C., as filed by the defendants is allowed.

6. However, this is subject to cost of Rs. 2000/- to be paid to the plaintiff, within four weeks, as a condition precedent of this order. Writ Petition is accordingly allowed in terms of prayer clause (a) and (b). No order as to cost.

[6]

[ANOOP V. MOHTA, J.]